

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Application No.:	10/593,145	Examiner:	Lundgren, Jeffrey S.
Filing Date:	September 18, 2006	Art Unit:	1639
First Inventor:	Yuichi OKU et al.	Customer No.:	23364
Attorney No.:	OKUY3002/GAL	Confirm. No.:	8771
For:	KIT, DEVICE AND METHOD FOR ANALYZING BIOLOGICAL SUBSTANCE		

**PETITION FOR WITHDRAWAL OF RESTRICTION REQUIREMENT
UNDER 37 CFR 1.144**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

It is respectfully requested that the Director review and direct withdrawal of the Restriction Requirement of March 25, 2009.

On June 25, 2009 applicants filed an amendment, election and traverse of the Restriction Requirement. In the subsequent office action of November 13, 2009 the Examiner made the Restriction Requirement final, stating "Applicant's election without traverse of Group XXXX (claim 52) in the reply filed on June 25, 2009 is acknowledged." The Examiner's statement is incorrect. In applicants' reply filed on June 25, 2009 applicants traversed the Restriction Requirement as follows:

“Responsive to the Office Action of March 25, 2009, applicants, by their undersigned attorney, hereby elect Group XXXX – claims 52 and 54.

However, the requirement for election is respectfully traversed. As the examiner recognizes, the captioned application is a U.S. National Phase of a PCT application and as such, the rules pertaining to restriction in U.S. domestic applications do not apply and the test is that of “Unity of Invention” under PCT rules 3.1 and 3.2. It is respectfully submitted that the Examiner has not identified what applicants regard as the “common technical feature.” It is further submitted that the test for unity of invention is satisfied here in that all of the claims recite a “common technical feature” as a combination of immunoreactive reagents for assay of an antigen, including a first nucleic acid fixed, in a “capturing zone”, to one of the first and second members **and an antibody**. WO01/61041 has different reagents dictated by its different use, i.e. to screen genomes for certain traits. See, for example page 1, lines 10-19.

Accordingly, given recognition of the “common technical feature” described above, it is respectfully requested that the requirement for restriction be withdrawn.”

WO01/61041 was cited by the Examiner in the Office Action of March 25, 2009 as allegedly proving lack of “a single general inventive concept” shared in common by the claims of the various groupings made by the Examiner. However, WO 01/61041 is not directed to antigen detection and does not use or suggest use of a reagent in the form of a conjugate of an antibody immunospecific to that antigen and a nucleic acid sequence complimentary to an immobilized (solid phase) nucleic acid sequence. Note that WO 01/61041 is not applied in any prior art rejection in the subsequent office action of November 13, 2009.

Hu cited in the subsequent Office Action of November 13, 2009 also lacks the conjugate of an antibody and nucleic acid sequence described above.

Accordingly, it is respectfully submitted that the Restriction Requirement should be withdrawn.

Respectfully submitted,
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Date: January 11, 2010

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